

## REMARKS

In connection with the RCE filed herewith, Applicants reply to the Final Office Action dated May 12, 2009 within two months. Claims 20-35 are pending in the application and the Examiner rejects claims 20-35. Applicants cancel claim 23 without prejudice to filing claims having similar subject matter in this or other applications. The amendments presented with this Reply (without prejudice or disclaimer) find support in the originally-filed specification, claims, and figures. Applicants respectfully request reconsideration of this application.

Applicants thank the Examiner for the interview conducted on June 16, 2009. The Examiner agreed that the proposed amendments Applicants presented would overcome the § 101 rejections, and those amendments are submitted with this Reply. The Examiner additionally indicated that including “financial” with “transaction request” and further clarifying how the transaction devices function would help to differentiate the claims from the cited references.

The Examiner rejects claims 20-35 under 35 U.S.C. § 101 “because the claimed invention is directed to non-statutory subject matter” (Office Action, page 3). Applicants present various amendments to the claims and respectfully request withdrawal of this rejection. However, Applicants note that the Supreme Court has recently granted certiorari in *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008) and Applicants thus do not disclaim any subject matter by virtue of these amendments, and Applicants reserve the right to present claims having similar subject matter to the pending claims in this or other applications.

The Examiner rejects claims 20-35 under 35 U.S.C. §103(a) as being unpatentable over Hurta et al., U.S. Patent No. 6,317,721 (“Hurta”) in view of Anderson et al., U.S. Patent No. 6,608,551 (“Anderson”). Applicants respectfully disagree with all of these rejections, but present amendments to the claims in order to clarify the patentable aspects of the claims and to expedite prosecution. Furthermore, Applicants do not concede that Hurta or Anderson are in fact prior art with respect to this application and Applicants reserve the option to antedate Hurta and/or Anderson.

### **Hurta and Anderson are not properly combinable**

Initially, Applicants assert that Hurta is not properly combinable with Anderson either because Hurta renders Anderson inoperable for its intended purpose or because it would not be possible to incorporate Anderson into Hurta’s interrogator. For example, Hurta discloses that “[a]t a toll plaza, a toll amount can be subtracted within a *short period of time*, so that a vehicle

bearing the transponder will not pass through an interrogator read zone (the zone in which the transponder and interrogator may perform RF communications) before an appropriate toll amount can be decremented from the amount stored within the transponder” (2:39-45; emphasis added). Anderson, on the other hand, discloses that the “wireless device 10 is *continuously polled for data* by the interrogator network and the data is uploaded via the interrogator network” (5:23-25; emphasis added). Therefore because Hurta requires communication between a “transponder” and an “interrogator” for only “a short period of time,” and Anderson requires that the “wireless device [is] continuously polled,” it would not have been obvious to incorporate Anderson with Hurta (particularly because Anderson’s counter is implicated during this “continuous[] polling” as discussed further below), and Applicants respectfully request withdrawal of all rejections based on the combination of Anderson and Hurta.

**The combination of Hurta and Anderson does not render Applicants’ claims obvious**

Additionally, neither Anderson nor Hurta disclose or contemplate, alone or in combination, all the elements of Applicants’ claims. For example, Hurta discloses that “a toll authority [may] monitor transaction numbers which are sent from a transponder (14) to an interrogator (12). By incrementing the transaction counter stored in the transponder with successful transactions the toll authority can ascertain whether accounting of a transaction has been missed” (Abstract). Nowhere, however, does Hurta disclose or contemplate, “denying, by said merchant system, said financial transaction request in response to said transactions counted value exceeding a maximum transactions value” as recited in claim 20, and as similarly recited in claims 26, 28, 32, and 35.

Furthermore, Anderson discloses that “[d]ata exchange occurs between the RFID tag and a network of RFID interrogators” (Abstract). “[T]he process initializes an RFID tag count and sets a counter M equal to zero. In step 204, the process looks for the RFID tag identification . . . and marks the current transaction in the format M:N where M is the current value of the counter and N is the identifying data for the RFID tag in a particular wireless device. . . . In step 208 the process checks if there is data to upload from the tag N. . . . In step 218, the process increments the tag count and sets  $M=M+1$ . The process is then repeated from step 204” (5:22-47). Thus, Anderson’s “counter” merely facilitates a “polled, asymmetric architecture that enables the use of a very inexpensive end device radio interface” (5:48-50). Nowhere does Anderson disclose that Anderson’s “counter” is related to any type of “financial transaction request,” as recited in


Applicants' claims. Moreover, nowhere does Anderson disclose or contemplate, "wherein said *financial* transaction request comprises a transactions counted value that indicates a *number of financial transactions performed with said RF transaction device*; transmitting said financial transaction request *to a transaction processor* [Anderson's RFID interrogator does not communicate with a "transaction processor"] . . . and *denying, by said merchant system, said financial transaction request* in response to said transactions counted value exceeding a maximum transactions value," as recited in claim 20 (emphasis added), and as similarly recited in claims 26, 28, 32, and 35. Applicants therefore respectfully request allowance of claims 20, 26, 28, 32, and 35.

Dependent claims 21-22, 24-25, 27, 29-31, and 33-34 variously depend from independent claims 20, 26, 28, and 32. Therefore, Applicants assert that dependent claims 21-22, 24-25, 27, 29-31, and 33-34 are patentable for at least the same reasons stated above for differentiating independent claims 20, 26, 28, and 32, as well as in view of their own respective features

In view of the above remarks, Applicants respectfully submit that all pending claims properly set forth that which Applicants regard as their invention and are allowable over the cited references. Accordingly, Applicants respectfully request allowance of the pending claims. The Examiner is invited to telephone the undersigned at the Examiner's convenience, if that would help further prosecution of the subject application. The Commissioner is authorized to charge any fees due to Deposit Account No. 19-2814.

Respectfully submitted,

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